Plumbers and Pipe Fitters Local Union No. 32, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO *and* Robert E. Bayley Construction, Inc. Case 19–CP–514

December 16, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

Upon a charge filed by Robert E. Bayley Construction, Inc. (Bayley) on May 27, 1992, against Plumbers and Pipe Fitters Local Union No. 32, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (the Respondent), the General Counsel of the National Labor Relations Board issued an amended complaint and notice of hearing on January 20, 1993.

The amended complaint alleges that the Respondent violated Section 8(b)(7)(C) of the Act by its picketing of Olympic Plumbing and Heating, Inc. (Olympic), a plumbing subcontractor on the port of Seattle's Pier 69 modification—remodeling construction project, on which Bayley was the general contractor.[1]

On June 7, 1993, the General Counsel, Bayley, Olympic, and the Respondent (collectively the parties) jointly filed a motion to transfer case to the Board and a stipulation of facts. The parties agreed that the charge, the initial complaint, the answer to the initial complaint, the amended complaint, the answer to the amended complaint, the amended answer, and the stipulation of facts, including the exhibits attached to the stipulation, constitute the entire record in this case, and that no oral testimony is necessary or desired by any party. The parties waived a hearing and the issuance of a decision by an administrative law judge, and submitted the case directly to the Board for findings of fact, conclusions of law, and a decision.

On August 31, 1993, the Board issued an order approving the stipulation, granting the motion, and transferring the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs.

The Board has delegated its authority in this proceeding to a three-member panel.

On the basis of the record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Bayley is a State of Washington corporation, with an office and place of business in Seattle, where it is engaged in the business of general construction. In the course and conduct of its business operations during the 12-month period preceding the issuance of the amended complaint, which period is representative of all times material, Bayley (1) had gross sales of goods and services valued in excess of $500,000; (2) sold and shipped goods or provided services valued in excess of $50,000 from its facilities within the State of Washington to customers outside that State, or to customers within that State, which customers were themselves engaged in interstate commerce by other than indirect means; and (3) purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of $50,000 directly from sources outside that State, or from suppliers within that State which in turn obtained such goods and materials directly from sources outside that State.

Olympic is a State of Washington corporation, with an office and place of business in Seattle, where it is engaged in the business of general construction. In the course and conduct of its business operations during the 12-month period preceding the issuance of the amended complaint, which period is representative of all times material, Olympic (1) sold and shipped goods or provided services valued in excess of $50,000 from its facilities within the State of Washington to customers outside that State, or to customers within that State, which customers were themselves engaged in interstate commerce by other than indirect means; and (2) purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of $50,000 directly from sources outside that State, or from suppliers within that State which in turn obtained such goods and materials directly from sources outside that State.

Bayley and Olympic are and have been at all material times employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] Sec. 8(b)(7)(C) states in pertinent part that

(b) It shall be an unfair labor practice for a labor organization or its agents—

(7) to picket . . . any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

. . . .

(C) where such picketing has been conducted without a petition under section 9(c) being filed within . . . thirty days from the commencement of such picketing: . . . . *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

The Respondent is and has been at all material times a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Stipulated Facts*

Bayley was the general contractor on the port of Seattle's Pier 69 modification—remodeling project, and Olympic was a subcontractor. The Respondent did not represent any employees on the project and its primary dispute was only with Olympic against which it conducted picketing in three discrete phases at the jobsite.[2]

1. Phase I

From March 10 through April 29, 1992,[3] the Respondent picketed with signs saying ''Olympic does not have a contract with Local 32 [i.e., the Respondent].'' The parties have stipulated that this phase I picketing was for a recognitional object.

On March 23, during the Respondent's phase I picketing, Olympic recognized and entered into a collective-bargaining agreement with a rival of the Respondent, the Independent Union of Plumbers and Pipe Fitters (IUPP). On March 31, however, after the Board's Regional Office notified Olympic that there was evidence that Olympic had improperly interfered with employee choice in the designation of IUPP as representative of its employees, Olympic informed IUPP in writing that it would not be honoring the March 23 collective-bargaining agreement.

On April 29, the Respondent, faced with an earlier 8(b)(7)(C) charge against it[4] alleging that its recognitional picketing was unlawful, notified Olympic in writing (1) that it was discontinuing the above-described picketing; (2) that it ''unequivocally disclaim[ed]'' any interest in representing Olympic's employees; (3) that it would not engage in any conduct inconsistent with that disclaimer; and (4) that it would resume picketing Olympic at the jobsite on May 4, ''for the sole and exclusive purpose of truthfully advising the public that [Olympic] does not employ members of Local 32.''

Also on April 29, the Respondent filed an 8(a)(2) charge against Olympic, alleging that Olympic had attempted in March to force its employees to join or assign bargaining rights to the IUPP.

2. Phase II

In phase II, the Respondent picketed from May 4 through 27 with signs saying ''Olympic does not employ members of Local 32.''

On May 21, the Board's Regional Director for Region 19 approved a bilateral settlement agreement in the above-mentioned 8(a)(2) case between Olympic and the Respondent. Under the terms of the agreement, Olympic agreed to post a notice in which it promised not to recognize, deal with, or assist the IUPP unless and until it became certified by the Board as the exclusive collective-bargaining representative of Olympic's employees.

During phase II, the Respondent continued to picket only at the primary gate until May 26, when it began picketing also at the neutral gate, still with signs saying ''Olympic does not employ members of Local 32.''

On May 26 and 27, coincident with the Respondent's expansion of picketing to include the neutral gate, and in the face of that picketing, a large number of employees of Bayley and other subcontractors on the project declined to come to work, and certain deliveries were not made.

On May 27, the Respondent notified Olympic in writing that (1) its picket signs were going to be changed to say ''Olympic Plumbing. Unfair Labor Practice. Plumbers Local 32'' and (2) that its picketing was ''in protest of your unfair labor practices and is for no other reason.''

3. Phase III

In phase III, the Respondent picketed from May 28 through June 29 at both the primary and the neutral gates, with signs saying ''Olympic Plumbing and Heating, Unfair Labor Practice, Plumbers and Pipe Fitters Local 32.'' The parties have stipulated that

> [S]o long as [the Respondent] continued to picket with signs on their face advertising Olympic's unfair labor practice [i.e., on and after May 28], at least some of the employees who had refused to cross the picket line to work for Bayley or other sub-contractors on May 26 and 27 continued to withhold their services from their employers and additional deliveries were turned away because their drivers would not cross the picket line.

Meanwhile, on May 29, Olympic posted the notices required by the 8(a)(2) settlement agreement. These notices remained posted for the required 60-day period. The 8(a)(2) case was closed by the Board's Regional Director on July 27, and the parties have stipulated that there is no evidence that Olympic engaged in any

[2] In the course of the events in question, the Respondent initially picketed Olympic only at the project's reserved primary gate, but later also picketed at the reserved neutral gate. The neutrality of the latter gate was, however, breached on a number of occasions by Olympic employees and agents. Accordingly, the parties have stipulated that ''[t]here is no allegation . . . that it was improper for Respondent to picket at the neutral gate as opposed to at the [primary] gate . . . at any time here relevant, *provided* [emphasis in original] that the issue is whether [the Respondent] was entitled to picket at all.''

[3] All the following dates are 1992, unless otherwise stated.

[4] In Case 19–CP–513, not the instant Case 19–CP–514.

activity which is inconsistent with the settlement agreement.

On June 29, all picketing ceased, pursuant to an order of the U.S. District Court for the Western District of Washington in a proceeding under Section 10(l) of the Act.

On January 20, 1993, the General Counsel issued the instant amended complaint, alleging that an object of the Respondent's picketing from and since March 10—notwithstanding the changes in language on the picket signs and the Respondent's disclaimers of a recognitional objective—has been to force or require Olympic to recognize and bargain with the Respondent, or to force or require Olympic's employees to accept or select the Respondent as their collective-bargaining representative, in violation of Section 8(b)(7)(C).

B. *Contentions of the Parties*[5]

The parties have stipulated that the phase I picketing, from March 10 through April 29, with signs stating ''Olympic does not have a contract with Local 32,'' was for a recognitional object.

1. The General Counsel's contentions

The General Counsel contends that the phase II picketing, from May 4 through 27, with signs stating ''Olympic does not employ members of Local 32,'' was also for a recognitional or organizational object within the meaning of Section 8(b)(7) of the Act, citing *Hotel & Restaurant Employees Local 681 (Crown Cafeteria II)*, 135 NLRB 1183 (1962), enfd. sub nom. *Smitley v. NLRB*, 327 F.2d 351 (9th Cir. 1964).

The General Counsel also contends that the Respondent's April 29 disclaimer of any recognitional object was invalid because (1) it was issued only in reaction to an 8(b)(7)(C) charge in an earlier case, Case 19–CP–513,[6] and (2) it was followed on May 4 by a resumption of assertedly recognitional picketing, i.e., the phase II picketing, with signs stating ''Olympic does not employ members of Local 32.''

Thus, the General Counsel contends, in effect, that phases I and II picketing from March 10 through May 25 was for a recognitional or organizational object; was conducted without a representation petition under Section 9(c) having been filed within 30 days from the start of that picketing; and was not otherwise permitted by the second proviso to Section 8(b)(7)(C), as picketing for the purpose of truthfully advising the public that Olympic did not have a contract with or employ members of the Respondent, because any such arguable protection by the proviso was lost, and the picketing became unlawful under Section 8(b)(7)(C) on and after May 26, when an effect of the picketing was to induce a work stoppage on the project.

The General Counsel further contends that the phase III picketing, from May 28 through June 29, with signs stating ''Olympic Plumbing and Heating, Unfair Labor Practice, Plumbers and Pipe Fitters Local 32,'' was also for a recognitional or organizational object; was conducted without a representation petition under Section 9(c) having been filed within 30 days from the start of that picketing; and was, on its face, not otherwise permitted by the second proviso to Section 8(b)(7)(C), as picketing for the purpose of truthfully advising the public that Olympic did not have a contract with or employ members of the Respondent.

2. The Respondent's contentions

The Respondent contends that its picketing after April 29 (i.e., its phases II and III picketing) was lawful under the Act because it did not have a recognitional object, but rather was for the ''exclusive purpose'' of providing information about Olympic's nonunion status and protesting Olympic's unlawful recognition of IUPP.

In support of its contention that its picketing from May 4 through 27 (i.e., phase II) was for the exclusive purpose of providing information about Olympic's nonunion status, the Respondent points to its April 29 letter to Olympic, in which the Respondent ''unequivocally disclaim[ed]'' any interest in representing Olympic's employees, promised not to do anything inconsistent with that disclaimer, and declared that its picketing starting May 4 would be for the ''sole and exclusive purpose of truthfully advising the public that [Olympic] does not employ members of'' the Respondent. The Respondent asserts that there is nothing in the record to indicate that it acted inconsistently with its stated intent in its April 29 letter to Olympic.

In support of its contention that its picketing from May 28 through June 29 (i.e., phase III) was for the exclusive purpose of protesting Olympic's unlawful recognition of IUPP, the Respondent points to its May 27 letter to Olympic, where the Respondent stated that its picketing from then on was going to be in protest of Olympic's unfair labor practices ''and for no other reason.'' Here again, the Respondent asserts that there is nothing in the record to indicate that it acted inconsistently with its stated intent in its May 27 letter to Olympic.

The Respondent contends that its earlier March 10–April 29 (phase I) recognitional picketing does not create an inference that its subsequent May 28–June 29 (phase III) picketing in protest of Olympic's unfair labor practices had a recognitional object, because of (1) the 1-month hiatus between the April 29 end of the phase I recognitional picketing and the May 28 start of the phase III unfair labor practice protest picketing; (2)

[5] Only the General Counsel and the Respondent filed briefs.

[6] The record contains no further information about Case 19–CP–513.

the Respondent's April 29 disclaimer of recognitional intent; and (3) the Respondent's May 27 assertion that its picketing from then on was only for the purpose of protesting Olympic's unfair labor practices.

The Respondent further notes that after April 29, it neither demanded that Olympic recognize it nor told Olympic that the picketing would be stopped if Olympic did recognize it. Thus, the Respondent contends that because its picketing after April 29 was, first, nonrecognitional informational picketing (phase II), and then (phase III) unfair labor practice protest picketing, the post-April 29 picketing was therefore outside the scope of picketing prohibited by Section 8(b)(7)(C), and consequently not in violation of that section, even though it had the effect of inducing individuals to stop working on the construction project or making deliveries to it.

C. *Analysis and Conclusions*

1. Applicable principles

Section 8(b)(7)(C), excerpted in footnote 1, supra, expressly prohibits, in pertinent part, union picketing that has *an* object (but not necessarily *the only* object[7]) of forcing or requiring an employer to recognize a union as the representative of the employer's employees, where (1) such union is not currently certified as the representative of those employees and (2) such picketing has been carried on without a representation petition having been filed under Section 9(c) of the Act within a reasonable time (not to exceed 30 days) from the start of the picketing.

The second proviso to Section 8(b)(7)(C), however, also set forth above (the so-called publicity proviso), expressly permits picketing for a recognitional object, even for more than 30 days without a representation petition having been filed, if such picketing is also for the purpose of truthfully advising the public that an employer does not employ members of, or have a contract with, a labor organization.[8]

But, as noted in the preceding footnote, even such permissible picketing for a recognitional object, that is also for the specified publicity purpose, expressly loses its protection under the publicity proviso, and thus violates Section 8(b)(7)(C)'s general prohibition against picketing for a recognitional or organizational object if, after 30 days without a representation petition having been filed, the picketing has (or continues to have) an effect of inducing any individual not to pick up, deliver, or transport any goods, or not to perform any services.[9]

Finally, Section 8(b)(7)(C) does not expressly prohibit picketing solely for the object of protesting unfair labor practices,[10] even if such picketing has the effect of interfering with deliveries and services.[11] Unfair labor practice picketing will, however, be prohibited by Section 8(b)(7)(C) where (1) it also has an object of forcing or requiring an employer to recognize a union as the representative of the employer's employees; (2) such union is not currently certified as the representative of those employees; and (3) such picketing has been carried on without a representation petition having been filed under Section 9(c) of the Act within a reasonable time (not to exceed 30 days) from the start of the picketing.

We now apply these principles to the facts in this case to determine whether any of the Respondent's picketing violated Section 8(b)(7)(C).

2. Phase I picketing (March 10 through April 29)

The parties have stipulated that the Respondent's phase I picketing, from March 10 through April 29, with signs saying ''Olympic does not have a contract with Local 32,'' was for a recognitional object. The Respondent was not at any material time certified as the representative of Olympic's employees, and the phase I picketing for a recognitional object was obviously carried on for more than 30 days without the filing of a representation petition. Thus, the phase I picketing for a recognitional object would be in violation of Section 8(b)(7)(C), unless it was nevertheless permitted by the publicity proviso because (1) it also (i.e., in addition to its recognitional object) had the purpose of truthfully advising the public that Olympic did not have a contract with the Respondent, and (2) it did not have an effect of inducing any individual not to pick up, deliver, or transport any goods, or not to perform any services.

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[7] *Theatrical Stage Employees Local 15 (Albatross Products)*, 275 NLRB 744, 745 fn. 4 (1985), and cases cited there (''[Sec. 8(b)((7)(C)] applies even if there are legitimate purposes for the picketing; it is sufficient to make out a violation of Section 8(b)(7) if *one* of the union objects is recognitional.'' (emphasis in original)).

[8] *Hotel & Restaurant Employees Local 681 (Crown Cafeteria II)*, supra.

In *Crown Cafeteria II*, the Board majority expressly adopted the dissenting opinion in *Crown Cafeteria I*, 130 NLRB 570, 574 (1961), which found that the publicity proviso permits recognitional picketing that would otherwise be prohibited by Sec. 8(b)(7)(C) where such recognitional picketing is also for the purpose of truthfully advising the public that an employer does not employ members of, or have a contract with, a labor organization, and where such recognitional picketing permitted by the publicity proviso does not have the effect of inducing a failure to pick up, deliver, or transport any goods or to perform any services.

[9] *Teamsters Local 294 (Gene Graham Ford)*, 188 NLRB 515, 519 (1971), and cases cited there.

[10] See *Waiters & Bartenders Local 500 (Mission Valley Inn)*, 140 NLRB 433, 437 (1963); *Hod Carriers Local 840 (C. A. Blinne Construction)*, 135 NLRB 1153, 1156, 1168 fn.29 (1962).

[11] Cf. *Houston Building Trades Council (Everett Construction Co.)*, 136 NLRB 321 (1962) (area standards picketing that was not for a recognitional or organizational objective did not violate Sec. 8(b)(7)(C) even though it interfered with deliveries and services; also citing *C. A. Blinne*, supra).

The phase I picket signs said ''Olympic does not have a contract with Local 32,'' which is language expressly permitted by the publicity proviso, and the phase I picketing did not have an impermissible effect of interfering with deliveries or the performance of services.

Accordingly, we conclude that the Respondent's phase I picketing for a recognitional object was protected by the publicity proviso of Section 8(b)(7)(C) and did not violate that Section of the Act.

3. Phase II picketing (May 4 through 27)

The phase II picket signs said ''Olympic does not employ members of Local 32.'' Notwithstanding the Respondent's April 29 purported disclaimer of any interest in representing Olympic's employees, the express language of the phase II picket signs bespeaks the picketing's recognitional object[12] and belies the Respondent's recognitional disclaimer.[13] Thus, we find that the phase II picketing was for a recognitional object.

We further find that this phase II picketing for a recognitional object was a continuation of the phase I picketing for a recognitional object. Under all the circumstances of this case, we do not believe that a cessation of 4 days, only 2 of which were presumptive workdays, was enough to interrupt the continuity of the picketing and thus to begin a new 30-day period under Section 8(b)(7)(C). The brief hiatus was preceded by 51 days and followed by another 57 days of uninterrupted picketing. It is also significant that the picketing before and after the hiatus was recognitional in object, albeit with two different legends on the picket signs. Thus, while a brief hiatus on a short-lived project, particularly where a change in objective was clearly demonstrated, might serve to immunize the resumed picketing,[14] this small interruption does not preclude tacking the pre- and posthiatus periods of picketing.

This phase II recognitional picketing was, however, also for the permissible purpose, within the scope of the publicity proviso to Section 8(b)(7)(C), of truthfully advising the public that Olympic did not employ members of the Respondent, and was immunized by the proviso so long as it did not interfere with deliveries or the performance of services. The phase II picketing from May 4 through 25 did not have such an impermissible effect, and consequently, like the phase I picketing, did not violate Section 8(b)(7)(C).

On May 26 and 27, the previously protected phase II picketing began to have the impermissible effect of interfering with deliveries and the performance of services on the jobsite, and therefore it lost the protection of the publicity proviso. Accordingly, we find that the Respondent's phase II picketing for a recognitional object on May 26 and 27 violated Section 8(b)(7)(C).

4. Phase III picketing (May 28 through June 29)

The phase III picket signs said ''Olympic Plumbing and Heating, Unfair Labor Practice, Plumbers and Pipe Fitters Local 32.'' On April 29 the Respondent purported to disclaim any interest in representing Olympic's employees, and on May 27 the Respondent (1) told Olympic that it was changing the language on the picket signs from a recognitional message to an unfair labor practice message, and (2) asserted that its phase III picketing was solely in protest of Olympic's unfair labor practice (i.e., Olympic's recognition of IUPP in March).

Notwithstanding the above steps taken by the Respondent, we conclude, for the reasons discussed below, that the phase III picketing was not solely for the purpose of protesting the Respondent's alleged unfair labor practice, but rather that it was at least partly for a continued recognitional object (i.e., continued from the virtually uninterrupted phases I and II recognitional picketing).

[12] *Hotel & Restaurant Employees Local 681 (Crown Cafeteria II)*, 135 NLRB 1183, 1185 (1962), enfd. sub nom. *Smitley v. NLRB*, 327 F.2d 351 (9th Cir. 1964) (''[D]oes not employ members of' clearly imports a present object of organization, and '[does not] have a contract with' just as clearly implies a recognition and bargaining object''). See also *Retail Store Employees Local 214 (Pick-N-Save Warehouse Foods)*, 244 NLRB 547, 550 (1980) (8(b)(7)(B) case; not-employ-members and not-have-a-contract messages on picket signs ''leave no doubt'' of a recognitional object); *Painters Local 130 (Joiner, Inc.)*, 135 NLRB 876 (1962) (8(b)(7)(B) case; not-employ-members and not-have-a-contract messages on picket signs shows a recognitional or bargaining objective).

As seen, the Board majority in *Crown Cafeteria II*, supra, expressly adopted the dissenting opinion in *Crown Cafeteria I*, which in turn expressly adopted the opinion of the court in *John C. Getreu v. Hotel & Restaurant Employees Local 58 (Fowler Hotel)*, 181 F.Supp. 738 (D.C.N.Ind. 1960), stating in pertinent part:

> [S]ubparagraph (C) means that although ''an object'' of picketing may be bargaining . . . it is immunized from the statute if ''the purpose'' of such picketing is also truthfully to [advise] the public that the employer does not have a contract with the union and further if the picketing does not curtail picking up, delivery or transportation of goods or the performance of services. It is difficult, if not impossible, to imagine any kind of informational picketing pertaining to an employer's failure or refusal to employ union members or to have a collective bargaining agreement where another object of such picketing would not be ultimate union recognition or bargaining. In most instances certainly the aim of such informational picketing could only be to bring economic pressure upon the employer to recognize and bargain with the labor organization.

[13] See *McClintock Market*, 244 NLRB 555 (1979).

[14] But see *Ladies Garment Workers Local 155 (Boulevard Knitwear Corp.)*, 167 NLRB 763, 765–767 (1967) (7-day hiatus in picketing and change in message on picket signs do not establish change from prehiatus recognitional object).

The Phase III Picketing was not Solely for the Purpose of Protesting Olympic's Unfair Labor Practice

At the outset, and particularly in light of the countervailing circumstances discussed below, we find the Respondent's May 27 change of the picket sign language (from a recognitional to an unfair labor practice message) to be unpersuasive on the ultimate issue of the object of the phase III picketing.[15] Likewise, we are not persuaded in this regard by the Respondent's May 27 declaration to Olympic that the Respondent's picketing from then on would be solely in protest of Olympic's unfair labor practices.[16] The Board determines the purpose and object of a course of picketing from all the circumstances surrounding it. In spite of the signage and the Respondent's assertion of a solely nonrecognitional object, several other relevant factors convince us that the phase III picketing had at least a partially recognitional objective.

We first find significant the fact that the alleged unfair labor practice in protest of which the Respondent assertedly began picketing in late May—Olympic's recognition of IUPP—actually occurred in late March, more than *2 months earlier*. The Respondent was far from idle during those 2 months, and indeed was engaged in picketing throughout the entire time. But the Respondent was picketing for a *recognitional* object, and did not assert, even in part, a protest of the alleged March unfair labor practice. This substantial passage of time between the alleged March 23 unfair labor practice and the asserted unfair labor practice picketing starting May 28, combined with the Respondent's continued recognitional picketing during that time, seriously undermines the persuasiveness of the Respondent's assertion that the sole reason for the phase III picketing from May 28 through June 29 was to protest the alleged unfair labor practice.

Second, that assertion is also undermined by the fact that on May 21, a week *before* the asserted unfair labor practice picketing even began, Olympic entered into a settlement agreement with the Respondent. Under this settlement agreement, Olympic promised generally not to interfere in any way with its employees' Section 7 rights, and it promised specifically not to recognize, deal with, or assist the IUPP unless and until it became certified by the Board as the exclusive collective-bargaining representative of Olympic's employees. In fact, as far back as March 31, Olympic notified the IUPP that it would not honor its March 23 collective-bargaining agreement with IUPP, and the Respondent concedes that since that time it has no evidence that Olympic has engaged in any conduct that was inconsistent either with that commitment or with its subsequent commitments in the settlement agreement. And yet, notwithstanding the settlement agreement and the absence of any evidence that Olympic had acted unlawfully since March 31, the Respondent claims that its picketing starting May 28 was solely in protest against that discontinued, settled, soon-to-be fully remedied March unfair labor practice.[17]

Third, the timing of the Respondent's asserted change in its picketing objective suggests that the phase III picketing retained at least *a* partially recognitional purpose. The Respondent purported to change on May 28 from recognitional picketing to unfair labor practice picketing only when (1) the Respondent's lawful picketing for a recognitional object became unlawful on May 26, i.e., when its impermissible effect on deliveries and the performance of services starting that day stripped it of the protection of the publicity proviso; and (2) the Respondent's continued *recognitional* picketing was therefore challenged on the grounds of those impermissible effects the following day, May 27, by Bayley's instant 8(b)(7)(C) charge.

By purporting to switch from recognitional picketing to unfair labor practice picketing, the Respondent was apparently attempting to switch to a type of picketing that would not be expressly prohibited by Section 8(b)(7)(C)'s ban against picketing for a recognitional object and would therefore not be encompassed within the scope of the 8(b)(7)(C) charge filed against the Respondent the day before.

More specifically, the Respondent changed the language on its picket signs on May 28, from a message that on its face bespoke a recognitional object (i.e., ''Olympic does not employ members of Local 32''), and which was thus subject to the constraints imposed

[15] See *Casino & Gaming Employees (New Pioneer Club)*, 166 NLRB 544 (1967). See also *Teamsters Local 295 (Calderon Trucking Corp.)*, 178 NLRB 52 (1969).

[16] See *New Pioneer Club*, supra.

[17] We do note, however, in deference to the Respondent's position, that although the 8(a)(2) settlement agreement was reached on May 21, about a week before the Respondent changed the message on its picket signs to refer to Olympic's alleged unfair labor practice, Olympic had in fact only just begun to post the 60-day notice called for in the settlement agreement at the time the Respondent began its purported unfair labor practice picketing on May 28. Unfair labor practice protest picketing which occurs after the settlement of the unfair labor practice, but still during the period of compliance with the settlement, is not conclusively invalidated as unfair labor practice protest picketing just because of such timing. Cf. *Mission Valley Inn*, supra, 140 NLRB at 438, stating:

> [A] refusal to accord recognition to the Union's claim that it was at all times engaged in unfair labor practice picketing does not resolve the issue [of the object of the picketing]. It does not follow that, because the picketing *after* settlement and *compliance* was not—or, more accurately, *may not be considered to have been*—for the object of protesting unfair labor practices, it was, therefore, for a proscribed object, namely recognition, bargaining, or organization. The existence of the proscribed object still remains an element of affirmative proof which is prerequisite to a finding of the violation here alleged, and cannot be supplied by merely disproving the existence of a different object. [Emphasis added.]

by Section 8(b)(7)(C), to a message that on its face did not bespeak such an object (i.e., ''Olympic Plumbing and Heating, Unfair Labor Practice, Plumbers and Pipe Fitters Local 32''), and which was thus not on its face subject to the constraints of Section 8(b)(7)(C). The day before, May 27, the Respondent claimed that the phase III picketing was going to be solely in protest against Olympic's alleged unfair labor practice.

We find that the steps taken by the Respondent on May 27 and 28 were largely, if not entirely, expedients employed to circumvent the invalidating effect of the May 26 and 27 interferences with deliveries and the performance of services on what had been the Respondent's openly recognitional picketing up to that time.[18]

In sum, the Respondent's assertion that the picketing it began on May 28 was solely for the purpose of protesting Olympic's assertedly unlawful March 23 recognition of the IUPP is substantially discredited by the facts that (1) the Respondent entered into a May 21 settlement agreement with Olympic in which Olympic promised not to recognize, deal with, or assist the IUPP unless and until it became certified by the Board as the exclusive collective-bargaining representative of Olympic's employees; (2) the Respondent concedes that Olympic acted at all times subsequent to March 31 in complete accord with its March 31 promise not to honor its collective-bargaining agreement with IUPP and with its subsequent commitments in the May 21 settlement agreement; (3) the Respondent did not even begin to picket in protest of this unfair labor practice until 2 months later—after picketing *for recognition* throughout this 2-month period; and (4) the timing of the asserted change in objective suggests that it was merely an attempt to cleanse the recently tainted recognitional picketing.

Thus, we find, on the totality of the circumstances, that the phase III picketing was at least in part for the same ongoing *recognitional* object that was the aim of the 2-1/2-month picketing in phases I and II that immediately preceded the asserted unfair labor practice picketing. Unlike the phases I and II picketing, however, the phase III picketing obviously was not for the purpose of truthfully advising the public that Olympic does not employ members of, or have a contract with, the Respondent, and it therefore was outside the scope of the protection of the publicity proviso. Accordingly, because the phase III picketing was recognitional, was conducted for more than 30 days from the March 10 start of the Respondent's picketing for a recognitional object without a representation petition under Section 9(c) having been filed, and was not protected by the publicity proviso, we conclude that it violated Section 8(b)(7)(C).

[18] See *Local Joint Executive Board of San Diego (Evans Hotels)*, 132 NLRB 737 (1961).

CONCLUSIONS OF LAW

1. Bayley and Olympic are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By picketing Olympic on May 26 and 27, 1992, with an object of forcing or requiring Olympic to recognize or bargain with it as the representative of Olympic's employees, without a petition under Section 9(c) of the Act having been filed within 30 days from the March 10, 1992 commencement of its picketing for a recognitional object, and for the purpose of truthfully advising the public that Olympic did not employ members of, or have a contract with it, but where the effect of that picketing was to induce individuals employed by other persons in the course of their employment not to pick up, deliver, or transport goods and not to perform services, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(b)(7)(C) and Section 2(6) and (7) of the Act.

4. By picketing Olympic from May 28 through June 29, 1992, with an object of forcing or requiring Olympic to recognize or bargain with it as the representative of Olympic's employees, without a petition under Section 9(c) of the Act having been filed within 30 days from the March 10, 1992 commencement of its picketing for a recognitional object, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(b)(7)(C) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(7)(C) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Plumbers and Pipe Fitters Local Union No. 32, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, Seattle, Washington, its officers, agents, and representatives, shall

1. Cease and desist from picketing Olympic Plumbing and Heating, Inc. with an object of forcing or requiring that employer to recognize or bargain with the Respondent as the representative of the employer's employees, without a petition under Section 9(c) of the Act having been filed within a reasonable period of time not to exceed 30 days from the commencement of such picketing, even if the purpose of such picket-

ing is truthfully advising the public that the employer does not employ members of, or have a contract with the Respondent, if the effect of the picketing for such purpose is to induce individuals employed by other persons in the course of their employment not to pick up, deliver, or transport any goods or not to perform any services.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its office and meeting halls copies of the attached notice marked ''Appendix.''[19] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Deliver to the Regional Director for Region 19 signed copies of the notice in sufficient number for posting by Olympic, if willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this order what steps the Respondent has taken to comply.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, nor will our officers, business representatives, business agents, or anyone acting for us, whatever his title may be, picket Olympic Plumbing and Heating, Inc. with an object of forcing or requiring that employer to recognize or bargain with us as the representative of the employer's employees, without a representation petition under Section 9(c) of the National Labor Relations Act having been filed within a reasonable period of time not to exceed 30 days from the commencement of such picketing, even if the purpose of such picketing is truthfully advising the public that the employer does not employ our members, or have a contract with us, if the effect of such picketing for such purpose is to induce individuals employed by other persons in the course of their employment not to pick up, deliver, or transport any goods or not to perform any services.

PLUMBERS AND PIPE FITTERS LOCAL UNION NO. 32, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL–CIO